

Memorandum to Lord Justice May

Administrative Court on Circuit

1. We recognise that practitioners in some major conurbations in the provinces wish to have claims which have to be lodged in the Administrative Court dealt with locally. This is entirely understandable and nothing in this memorandum is intended to impede that. But we are concerned that the suggestions which we understand are being considered will not be cost effective, will not provide the service which the users are entitled to receive and will create problems for the court generally.
2. We do not oppose the possibility of local lodging of claims. But we are satisfied that they must be dealt with centrally. If there have been any problems about the manner in which this has been done in Cardiff, we see no reason why training should not produce the necessary efficiency. If they are not dealt with centrally, we face the following problems:-
 - (i) Any claim for judicial review has a potential for wider application than the case itself even though it may seem only to affect the individual claimant. That is one of the main reasons why the very short time limit is imposed. It is essential that the court knows what issues are being raised in all claims in case, for example, there are other claims which raise the same issue and a decision has been made to deal with it by a lead case or cases.
 - (ii) What criteria are to be applied in determining whether a case should be dealt with and heard locally? Does the claimant have to live in a particular area? Must the defendant be local? Many claims are against central government; but those against local authorities may often involve other authorities, including central government when questions such as who should provide funding to meet a need arise.

(iii) Since, as we understand it, considerable use may have to be made of deputies, it is important to remember the limitations on claims which can be put to deputies. Furthermore, the whole point of having nominated judges is to develop a degree of expertise in those who sit in the Administrative Court and judges are able to discuss matters between themselves and to obtain assistance from Lynne and the lawyers attached to the court. Local hearings will lead to an unacceptable isolation.

(iv) The court employs a number of lawyers whose input in processing cases is invaluable and necessary. Is it proposed that extra money is to be found to employ a lawyer or lawyers to deal with the relatively small number of claims which will be processed locally? If not, the local judges will be deprived of a necessary service. Central control would remove the difficulty. The lawyers have individual expertise which means that all areas to which claims relate can be covered.

(v) Emergency applications to the duty judge, if granted, will almost always require an undertaking to lodge a claim on the next working day. Unless the central office is notified that a claim has been lodged, there are bound to be problems in ensuring that the undertaking has been honoured.

(vi) With modern technology, it is difficult to understand why the RCJ office should not deal with all cases. If case management is needed, it can often more conveniently be dealt with centrally where judges will be available.

(vii) Criminal cases, whether judicial review or cases stated which are directed to be dealt with by a single judge, are never put before a deputy because appeal lies direct to the House of Lords. Furthermore, criminal judicial review may merit a hearing by a Divisional Court and it has been decided that any which concern a point of real importance may be put to the CACD to be listed before a court hearing criminal appeals (which will of course sit as a Divisional Court). At present the lead judge decides whether any case, civil or criminal, merits a Divisional Court rather than a single judge. That can only be dealt with if there is central control.

(viii) There are a number of claims made by litigants in person which are often vexatious (although no order has been made) because they try to pursue the same matter again and again. There can be no doubt that they will seek to take advantage of the opportunity to make the same claim locally if it has failed centrally or in another venue. Unless there is central control, the existence of these claims cannot be properly monitored and so defendants will be forced to incur unnecessary costs.

(ix) If the protocol relating to removals comes into being, it will apply locally as well as centrally. The need for speed and communication with the Home Office makes central control necessary.

3. A far more cost effective means of providing local hearings can be achieved by way of video link hearings. Since the Administrative Court very rarely hears live witnesses, it is the ideal candidate for such hearings. Video link gives a local hearing, the only difference being that the judge is on screen rather than there in person. It means that, for example, a renewed application for permission can be included in a general list and slotted in at a particular time during the day. It provides for the provinces a full service so that there is no question of second class service. And for emergency cases it is possible where, for example, the defendant is in London (perhaps because central government) or is outside the relevant local area, to have a three-way link or the defendant's representative in London and the claimant's in, say, Manchester. We would urge those responsible for the recommendations to consult the Scots who have had I.A.T. hearings via video link for some 5-6 years and who are entirely satisfied with the service.
4. We do not say that administrative cases should never be heard locally. No doubt sometimes that might be convenient, but it can be dealt with centrally.
5. We are concerned that what is proposed will create a deployment nightmare. It will be necessary to find a nominated judge to hear administrative cases and, if deputies are to be used, circuit judges usually have their sittings planned many months in advance. Experience has shown that attempts to hear administrative cases on circuit have not been entirely successful, largely because there are not enough of them to be slotted into a particular week.

6. Is it envisaged that in addition to local cases those who are ticketed or nominated on circuit will deal with paper applications from the office in London? They should and so there will be involvement from the centre in any event. We would oppose anything which means that those in London have to deal with the tedious paper work while interesting claims are heard by deputies or others on circuit.
7. We would conclude by expressing our surprise that such a costly means of providing local hearings should be suggested in the 21st century when the technology available gives a far more cost effective means of providing the desired service. It does seem extraordinary that in these days of sophisticated communications it is thought necessary to require judges to travel to sit on circuit, particularly as this was not considered necessary over the last 150 years or so when communications were more primitive. We would also note that there was a problem with forum shopping when, for example, the Palatine Court was in being. Such activities could be encouraged if local administration of cases is introduced.

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Lead Judge
Administrative Court

Roger Venne
Master of the Crown Office

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Head of Administrative Court Office